



## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1231

[Docket No. CPSC-2015-0031]

#### Amendment to Incorporation by Reference in Safety Standard for High Chairs

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Consumer Product Safety Commission (Commission or CPSC) previously published a consumer product safety standard for high chairs under section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA). The CPSC mandatory standard incorporates by reference the ASTM voluntary standard for high chairs. ASTM recently updated this voluntary standard. Pursuant to the CPSIA, the updated ASTM standard will become the CPSC mandatory standard for high chairs effective July 23, 2022. The Commission is issuing a final rule to update the version of the standard that is incorporated by reference in its regulations to reflect the version that will be mandatory by operation of law under the CPSIA.

**DATES:** This final rule is effective on July 23, 2022.

**FOR FURTHER INFORMATION CONTACT:** Keysha Walker, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504-6820; e-mail: [KWalker@cpsc.gov](mailto:KWalker@cpsc.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

###### *1. Statutory Provisions*

Section 104(b)(1) of the CPSIA requires the Commission to assess the effectiveness of voluntary standards for durable infant or toddler products and adopt mandatory standards for these products. 15 U.S.C. 2056a(b)(1). The mandatory standard must be “substantially the same as” the voluntary standard, or it may be “more stringent than” the voluntary standard, if the

Commission determines that more stringent requirements would further reduce the risk of injury associated with the product. *Id.*

Section 104(b)(4)(B) of the CPSIA specifies the process for updating the Commission's rules when a voluntary standards organization revises a standard that the Commission incorporated by reference under section 104(b)(1). First, the voluntary standards organization must notify the Commission of the revision. Once the Commission receives this notification, the Commission may reject the revised standard by notifying the voluntary standards organization, within 90 days of receiving notice of the revision, that it has determined that the revised standard does not improve the safety of the consumer product and that it is retaining the existing standard. If the Commission does not take this action to reject the revised standard, then the revised voluntary standard will be considered a consumer product safety standard issued under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the Commission received notification of the revision, or on a later date specified by the Commission in the *Federal Register*. 15 U.S.C. 2056a(b)(4)(B).

## *2. Safety Standard for High Chairs*

In June 2018, under section 104(b)(1) of the CPSIA, the Commission adopted a mandatory rule for high chairs, codified in 16 CFR part 1231. The rule incorporated by reference ASTM F404-18, *Standard Consumer Safety Specification for High Chairs*, with no modifications. 83 FR 28358 (June 19, 2018). At the time the Commission published the final rule, ASTM F404-18 was the current version of the voluntary standard.

In April 2019, ASTM notified CPSC that it had issued a revised standard for high chairs, ASTM F404-18a. In accordance with the procedures set out in section 104(b)(4)(B) of the CPSIA, the Commission determined that the updated standard did not improve the safety of high

chairs and notified ASTM accordingly, thereby retaining ASTM F404-18 as the mandatory standard.<sup>1</sup>

In January 2021, ASTM again notified CPSC that it had issued a revised standard for high chairs, ASTM F404-20. The Commission allowed the revised standard to become the new mandatory standard for high chairs, effective July 3, 2021. The Commission published a direct final rule to update 16 CFR part 1231, incorporating by reference ASTM F404-20, with no modifications. 86 FR 17296 (Apr. 2, 2021).

On January 24, 2022, ASTM notified CPSC that it had again revised the voluntary standard for high chairs, approving ASTM F404-21 on November 15, 2021.<sup>2</sup> On April 22, 2022, the Commission voted on whether to accept the revised ASTM standard as the mandatory standard for high chairs.<sup>3</sup> The Commission did not reach a majority vote and, accordingly, no action was taken. As such, by operation of law under section 104(b)(4)(B) of the CPSIA, ASTM F404-21 will become the mandatory consumer product safety standard for high chairs on July 23, 2022, 180 days after CPSC received notice of the ASTM update. 15 U.S.C. 2056a(b)(4)(B).

To align the Commission's regulations with the update that will take effect by operation of law, this final rule updates 16 CFR part 1231 to incorporate by reference ASTM F404-21.<sup>4</sup>

## **B. Revisions to ASTM F404**

The ASTM standard for high chairs includes performance requirements, test methods, and requirements for warning labels and instructional literature, to address hazards to children associated with high chairs, including stability, structural integrity, trays, restraints, and entrapment. This section describes the changes in ASTM F404-21, as compared to ASTM F404-

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<sup>1</sup> CPSC staff's briefing package regarding ASTM F404-18a is available at: <https://www.cpsc.gov/s3fs-public/Update%20to%20Voluntary%20Standard%20for%20High%20Chairs.pdf>.

<sup>2</sup> ASTM published ASTM F404-21 in January 2022.

<sup>3</sup> CPSC staff's briefing package regarding ASTM F404-21 is available at: [https://www.cpsc.gov/s3fs-public/ASTMs-Revised-Safety-Standard-for-High-Chairs\\_0.pdf?VersionId=OQF17Ki4XDJr0GJJikxve5tPrGpZmuC8](https://www.cpsc.gov/s3fs-public/ASTMs-Revised-Safety-Standard-for-High-Chairs_0.pdf?VersionId=OQF17Ki4XDJr0GJJikxve5tPrGpZmuC8). The Commission voted 2-2. Chair Hoehn-Saric and Commissioner Baiocco voted to approve publication of a direct final rule to update the mandatory standard to incorporate by reference ASTM F404-21; Commissioners Feldman and Trumka voted not to approve publication of the direct final rule. Chair Hoehn-Saric, Commissioner Feldman, and Commissioner Trumka issued statements with their votes.

<sup>4</sup> The Commission voted 5-0 to approve this notification.

20, which is the current mandatory standard. ASTM F404-21 contains substantive revisions, as well as editorial, non-substantive revisions.

### *1. Substantive Revisions*

ASTM F404-21 includes updates to section 7.7, Stability Testing, to clarify the design and placement of test weights, which are used to conduct forward, sideways, and rearward stability testing, prescribed in sections 7.7.2.5, 7.7.2.6, and 7.7.2.7 of the standard.

The first revision is in section 7.7.1 of the standard. This section states that the test weight is a “steel weight” with specified dimensions. In ASTM F404-20, note 11 to section 7.7.1 stated that the steel test weight size was designed to allow the use of eight stacked plates of standard, cold-rolled steel, with specified dimensions. In ASTM F404-21, note 11 has been revised to allow for the use of a solid steel block as the test weight, as an alternative to the stack of cold-rolled steel plates.

The second revision is in section 7.7.2.3, which specifies the placement of test weights on the seat. ASTM F404-20 specified that test weights were to be placed horizontally on the seat bottom with the longest dimension in the front-to-back direction and in contact with the seat back. In ASTM F404-21, section 7.7.2.3 and note 12 to that section have been revised so that when test weights cannot be centered on a seating surface when oriented horizontally, they may be oriented vertically on the seat to align the center of the test weights with the center of the seat.

The third revision relocated section 7.7.2.1 to section 7.7.2.4. This section specifies that, for high chairs that include a tray, the tray is to be adjusted to the rear position, closest to the seat back for stability testing. In ASTM F404-20, tray adjustment occurred at the beginning of the stability testing procedure before test weights were placed in the high chair. In ASTM F404-21, the tray adjustment occurs after the placement of test weights. The standard now specifies that, for high chairs that include a tray, the tray is to be adjusted to the rear position, closest to the seat back or until the tray comes into contact with the test weight on the seat.

### *2. Non-Substantive Revisions*

ASTM F404-21 also includes minor additions and revisions that are editorial and do not alter any substantive requirements in the standard. These changes include revising section numbers referenced throughout the standard to reflect updated section numbers in section 7 of the standard; revising wording for clarity; adding conversions to metric units for certain measurements; and changing the phrase “restraining system” to “restraint system,” to be consistent with other standards.

### **C. Incorporation by Reference**

Section 1231.2 of the final rule incorporates by reference ASTM F404-21. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to a final rule, ways in which the material the agency incorporates by reference is reasonably available to interested parties, and how interested parties can obtain the material. In addition, the preamble to the final rule must summarize the material. 1 CFR 51.5(b).

In accordance with the OFR regulations, section **B. Revisions to ASTM F404** of this preamble summarizes the major provisions of ASTM F404-21 that the Commission incorporates by reference into 16 CFR part 1231. The standard is reasonably available to interested parties. Until the final rule takes effect, a read-only copy of ASTM F404-21 is available for viewing, at no cost, on ASTM’s website at: <https://www.astm.org/CPSC.htm>. Once the rule takes effect, a read-only copy of the standard will be available for viewing, at no cost, on the ASTM website at: <https://www.astm.org/READINGLIBRARY/>. Interested parties can also schedule an appointment to inspect a copy of the standard at CPSC’s Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone: (301) 504-7479; e-mail: [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov). Interested parties can purchase a copy of ASTM F404-21 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959 USA; telephone: (610) 832-9585; [www.astm.org](http://www.astm.org).

## **D. Certification**

Section 14(a) of the Consumer Product Safety Act (CPSA; 15 U.S.C. 2051-2089) requires manufacturers of products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, to certify that the products comply with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program, or for children's products, on tests of a sufficient number of samples by a third party conformity assessment body accredited by CPSC to test according to the applicable requirements. As noted, standards issued under section 104(b)(1)(B) of the CPSIA are "consumer product safety standards." Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because high chairs are children's products, a CPSC-accepted third party conformity assessment body must test samples of the products. Products subject to part 1231 also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA,<sup>5</sup> the phthalates prohibitions in section 108 of the CPSIA<sup>6</sup> and 16 CFR part 1307, the tracking label requirements in section 14(a)(5) of the CPSA,<sup>7</sup> and the consumer registration form requirements in section 104(d) of the CPSIA.<sup>8</sup>

## **E. Notice of Requirements**

In accordance with section 14(a)(3)(B)(iv) of the CPSIA, the Commission previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for testing high chairs. 83 FR 28358 (June 19, 2018). The NOR provided the criteria and process for CPSC to accept accreditation of third party conformity assessment bodies for testing high chairs to 16 CFR part 1231. The NORs for all mandatory standards for durable infant or

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<sup>5</sup> 15 U.S.C. 1278a.

<sup>6</sup> 15 U.S.C. 2057c.

<sup>7</sup> 15 U.S.C. 2063(a)(5).

<sup>8</sup> 15 U.S.C. 2056a(d).

toddler products are listed in the Commission’s rule, “Requirements Pertaining to Third Party Conformity Assessment Bodies,” codified in 16 CFR part 1112. *Id.*

ASTM F404-21 includes revised requirements for testing high chairs. However, these revisions to test requirements do not require additional equipment or significant changes to existing test protocols. The change to test weight design provides an alternative to the existing requirement, and the changes to test weight orientation and tray adjustment alter only the timing and placement of features during existing test procedures. Accordingly, the revisions do not significantly change the way that third party conformity assessment bodies test these products for compliance with the safety standard for high chairs. Laboratories will begin testing to the new standard when ASTM F404-21 takes effect, and the existing accreditations that the Commission has accepted for testing to this standard will cover testing to the revised standard. Therefore, the Commission considers the existing CPSC-accepted laboratories for testing to ASTM F404-20 to be capable of testing to ASTM F404-21 as well. The existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies are expected to update the scope of the testing laboratories’ accreditations to reflect the revised standard in the normal course of renewing their accreditations.

#### **F. Good Cause for Immediate Adoption**

The Administrative Procedure Act (APA; 5 U.S.C. 551-559) generally requires agencies to provide notice of a rule, an opportunity for interested parties to comment on it, and that the rule be published at least 30 days before its effective date. 5 U.S.C. 553(b), (c), (d). However, under section 553(b)(3)(B) of the APA, the notice and comment requirement does not apply when an agency “for good cause finds” that notice and comment procedures are “impracticable, unnecessary, or contrary to the public interest” and includes such finding and a brief statement of supporting reasons in the rule. In addition, section 553(d)(3) of the APA allows an agency, upon

finding good cause and publishing it with the rule, to make a rule effective earlier than the 30-day delay required in the statute.

As discussed above, this final rule updates the Commission's regulations to reflect a revision to the mandatory standard that automatically will take effect by operation of law under the CPSIA. Specifically, under the process set out in section 104(b)(4)(B) of the CPSIA, when ASTM revises a standard that the Commission has previously incorporated by reference under section 104 of the CPSIA, that revision will become the new mandatory CPSC standard, unless the Commission determines that ASTM's revision does not improve the safety of the product and so notifies ASTM. Thus, if the Commission does not take these steps to reject an update, the ASTM revision becomes CPSC's standard by operation of law. Because the Commission did not notify ASTM that it was rejecting ASTM F404-21 within 90 days of notification, the revised standard will become mandatory by operation of law on July 23, 2022.

The purpose of this final rule is to update the reference in the Code of Federal Regulations (CFR) so that it reflects the version of the standard that will take effect by statute. This rule updates the reference in the CFR, but under the terms of the CPSIA, ASTM F404-21 will take effect as the new CPSC standard for high chairs, even if the Commission does not issue this rule. Because the update will take effect by operation of law, this final rule does not substantively alter the mandatory standard; rather, it aligns the regulations with the statutory mandate that takes effect on July 23, 2022. As such, public comments would not alter the substance of the standard or the effect of the revised standard as a consumer product safety standard under section 104 of the CPSIA. Therefore, the Commission finds that notice and public comment on this final rule are unnecessary.

In addition, the Commission finds good cause to make this rule effective on July 23, 2022, rather than providing a 30-day delay before the effective date. If the update to the regulations is delayed, the regulations will not reflect the correct version of the ASTM standard that is mandatory, making the regulations inaccurate and potentially confusing for regulated



entities. Moreover, because this final rule merely updates the regulations to reflect a statutory change to the mandatory standard, a delayed effective date is unnecessary, as regulated entities will have to comply with the revised standard as of July 23, 2022, regardless of whether the regulations have been updated. Therefore, the Commission finds good cause to make this final rule effective on July 23, 2022.

### **G. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601-612) generally requires agencies to review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603, 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As discussed in section **F. Good Cause for Immediate Adoption** of this preamble, the Commission has determined that notice and the opportunity to comment are unnecessary for this rule. Therefore, the RFA does not apply. CPSC also notes the limited nature of this document, which merely updates the incorporation by reference to reflect the mandatory CPSC standard that will take effect under section 104 of the CPSIA.

### **H. Paperwork Reduction Act**

The mandatory standard for high chairs includes requirements for marking, labeling, and instructional literature that constitute a “collection of information,” as defined in the Paperwork Reduction Act (PRA; 44 U.S.C. 3501-3521). The updated mandatory standard does not alter these requirements. The Commission took the steps required by the PRA for information collections when it adopted 16 CFR part 1231, including obtaining approval and a control number. Because the information collection is unchanged, the revision does not affect the information collection requirements or approval related to the standard.

### **I. Environmental Considerations**

The Commission’s regulations provide a categorical exclusion for the Commission’s rules from any requirement to prepare an environmental assessment or an environmental impact

statement where they “have little or no potential for affecting the human environment.” 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

## **J. Preemption**

Section 26(a) of the CPSA provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. 15 U.S.C. 2075(a). Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to CPSC for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA deems rules issued under that provision “consumer product safety standards.” Therefore, once a rule issued under section 104 of the CPSIA takes effect, it will preempt in accordance with section 26(a) of the CPSA.

## **K. Effective Date**

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standards organization revises a standard that the Commission adopted as a mandatory standard, the revision becomes the CPSC standard within 180 days of notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product and so notifies the standards organization, or the Commission sets a later date in the *Federal Register*. 15 U.S.C. 2056a(b)(4)(B). Because the Commission did not notify ASTM that it was rejecting the update or set a later effective date, ASTM F404-21 will take effect as the new mandatory standard for high chairs on July 23, 2022, 180 days after January 24, 2022, when the Commission received notice of the revision.

## **L. Congressional Review Act**

The Congressional Review Act (CRA; 5 U.S.C. 801-808) states that before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission

must indicate whether the rule is a “major rule.” The CRA states that the Office of Information and Regulatory Affairs determines whether a rule qualifies as a “major rule.”

Pursuant to the CRA, this rule does not qualify as a “major rule,” as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

### **List of Subjects in 16 CFR Part 1231**

Consumer protection, Imports, Incorporation by reference, Imports, Infants and children, Law enforcement, Safety, Toys.

For the reasons discussed in the preamble, the Commission amends 16 CFR chapter II as follows:

### **PART 1231 – SAFETY STANDARD FOR HIGH CHAIRS**

1. The authority citation for part 1231 continues to read as follows:

**Authority:** Sec. 104, Pub. L. 110-314, 122 Stat. 3016 (15 U.S.C. 2056a); Sec 3, Pub. L. 112-28, 125 Stat. 273.

2. Revise § 1231.2 to read as follows:

#### **§ 1231.2 Requirements for high chairs.**

Each high chair shall comply with all applicable provisions of ASTM F404-21, *Standard Consumer Safety Specification for High Chairs*, approved on November 15, 2021. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A read-only copy of the standard is available for viewing on the ASTM website at <https://www.astm.org/READINGLIBRARY/>. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959; telephone (610) 832-9585; [www.astm.org](http://www.astm.org). You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504-7479, e-mail [cpsc-os@cpsc.gov](mailto:cpsc-os@cpsc.gov), or at the National

Archives and Records Administration (NARA). For information on the availability of this material at NARA, e-mail [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov), or go to: [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

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**Alberta E. Mills,**

*Secretary,*

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